PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN THE STATE CUSTODY

Name PLAZA JESSE M.
(Last) (First) (Initial)

Prisoner Number H-12371

Institutional Address CIF CENTRAL ZW-302U

P.O. BOX 689 SOLEDAD, CA. 93960-0689

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSE M. PLAZA

vs.

BEN CURRY (WARDEN)
(Enter the full name of plaintiff)
CORRECTIONAL TRAINING
FACILITY SOLEDAD, CA. 93960-0689

(Enter the full name of respondent)

CV Case No. 08 1589
(To be provided by the clerk of court)

PETITION FOR WRIT OF HABEAS CORPUS

JF
(PR)

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

LOS ANGELES SUPERIOR COURT — NORWALK CA.

Court — Location

(b) Case number, if known VA004108

(c) Date and terms of sentence 9-28-91 25 YEARS TO LIFE

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No ____

Where?

Name of Institution: CIF CENTRAL P.O. BOX 689

Address: ZW 302U SOLEDAD, CA. 93960-0689

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

P.C. 187

3. Did you have any of the following?

Arraignment: Yes X No ____

Preliminary Hearing: Yes X No ____

Motion to Suppress: unknown Yes ____ No ____

4. How did you plead?

Guilty ____ Not Guilty X Nolo Contendere ____

Any other plea (specify) ____

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone ____ Judge alone on a transcript ____

6. Did you testify at your trial? Yes X No ____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No ____

(b) Preliminary hearing Yes X No ____

(c) Time of plea Yes X No ____

(d) Trial Yes X No ____

(e) Sentencing Yes X No ____

(f) Appeal Yes X No ____

(g) Other post-conviction proceeding Yes ____ No X

8. Did you appeal your conviction? Yes X No ____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No ____

Year: 1991 Result: DENIED

Supreme Court of California Yes X No ____

Year: unknown Result: DENIED

Any other court Yes ____ No X

Year: none Result: ____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes ____ No X

(c) Was there an opinion? Yes X No ____

(d) Did you seek permission to file a late appeal under Rule 31(a)? Yes ____ No X

If you did, give the name of the court and the result:

n/a

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ____ No X

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: n/a

Type of Proceeding: ____

Grounds raised (Be brief but specific):

a. ____

b. ____

c. ____

d. ____

Result: ____ Date of Result: ____

II. Name of Court: n/a

Type of Proceeding: ____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

III. Name of Court: n/a

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

IV. Name of Court: n/a

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes ____ No X

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One: SEE ATTACHED HABEAS PETITION

Supporting Facts:

Claim Two: SEE ATTACHED HABEAS PETITION

Supporting Facts:

Claim Three: SEE ATTACHED HABEAS PETITION

Supporting Facts:

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

NONE

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

SEE ATTACHED HABEAS PETITION

Do you have an attorney for this petition? Yes____ No X

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 3-16-08
Date

Jesse M. Plaza
Signature of Petitioner

(Rev. 6/02)

Comes now, Jesse Plaza, petitioner in pro se, and hereby petitions this honorable court for a writ of habeas corpus on petitioner's parole suitability hearing, held on May 1, 2006.

Petitioner is in custody of the California Department of Corrections and rehabilitation, at the correctional training facility in Soledad, California serving a term of 25 years to life following his conviction in 1991 in Los Angeles County Superior Court case no VA004108. Wherein petitioner was convicted of first degree murder in violation of penal code section 187. Petitioner was received by the Department of Corrections on October 9, 1991, when his life term commenced. This petition is intended to give meaning to petitioner, Jesse Plaza, (hereafter "Petitioner"), sentence of 25 years to life for "first degree murder". On May 1 2006, petitioner went before the Board of Parole Hearings for his initial parole. (Petitioner's minimum eligible parole date is 1-25-07) for a finding of suitability, and the setting of his term uniformly. Petitioner submits that the Board of Parole Hearings (hereafter "Board") regulations, California code of regulations, Title 15, section 2402(a) **Demands** that the Board set a release date unless petitioner currently presents a unreasonable risk of danger to public saftey. Petitioner submits that there is nothing in the Board's decision indicating the basis for that belief, which petitioner discusses and proves infra.

STATE AND FEDERAL CLAIM NUMBER ONE
CALIFORNIA PENAL CODE §3041(a)(b) CREATES A PROTECTABLE LIBERTY INTEREST AT A PAROLE SUITABILITY HEARING, AND A "REASONABLE" EXPECTATION OF A RELEASE DATE. THE COMMANDING WORD "SHALL" CLEARLY ESTABLISHES THIS EXPECTATION.

Under California law, a convicted person sentenced to a term of 15/25 years to life shall be released on parole unless his release would pose an unreasonable risk to public safety or unreasonable risk to public safety or unreasonable risk to society if released from prison. Cal. P.C. §3041(a)(b); Cal. Code of regs., Title 15, 2400-2411.

DUE PROCESS IN THE PAROLE CONTEXT

The Fifth and Fourteenth Amendments prohibit the government from depriving an inmate of life, liberty, or property without due process of law. United States Constitutional Amendments, V, XIV.

It is now settled that California parole scheme, codified in California Penal Code section §3041, vests all "prisoners whose sentences provide for the possibility of parole with a constitutionally protected liberty interest in the receipt of parole release date, a liberty interest that is protected by the procedural safeguards of the due process Clause." Irons v. Carey, 479 F.3d 658, 662 (9th cir. 2007) (citing Sass v. California Board of Prison Terms, 461 F3d 1123, 1128 (9th cir. 2006); Biggs v. Terhune, 334 F.3d 910, 914 (9th cir. 2003); McQuillon v. Duncan, 306 F.3d 895, 903 (9th cir. 2002).

Under the "clearly established" framework of Greenholtz and Allen, we hold that California's parole scheme gives rise to a cognizable liberty interest on parole. The scheme "creates a presumption that parole release will be granted, unless the statutorily defined determinations are made. Allen, 482 at 378 (quoting Greenholtz, 442 U.S. at 12). In, In re Deluna, 126 Cal. App.4th 585, 24 Cal.Rptr.3d 643 (2005), held that under Rosenkrantz and McQuillon, parole applicants continue to have a "liberty interest" in parole release.

STATE AND FEDERAL CLAIM NUMBER TWO
THE BOARD VIOLATED PETITIONER"S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION ARTICLE 1, SEC, 7(a), BY MIS-APPLYING PAROLE SUITABILITY CRITERIA, AND, APPLYING ARTITRARY AND CAPRCIOUS EVIDENTIARY SUPPORT TO DENY PAROLE.

On May 1, 2006, the Board conducted petitioner's Initial Parole Consideration Hearing. The Board found petitioner unsuitable and denied parole for a period of two years. (Exhibit "A" 89-93) In support of its findings that the petitioner currently posed an unreasonable risk to society, the Board found that the "offense was carried out in an especially cruel and callous manner", "carried out in a calculated manner", "The motive for the crime was very trivial in that it was a gang related shooting", and the unsupported conclusion that the petitioner has refused to take responsibility for his actions. Petitioner was, however, commended for programming extremely well, commended for remaining disciplinary free, obtaining a positive psychological evaluation, participating in AA and NA, completing two vocations and securing positive parole plans. (Exhibit "A", p. 89-93). Despite all the evidence supporting a granting of parole, the board found petitioner unsuitable for grant of parole based on the commitment offense, including and unsupported conclusion that petitioner tries to minimize his responsibility.

Petitioner alleges that there was no evidence to support the Board's finding that he poses a current unreasonable risk if released. In fact, all current, reliable evidence presented to the Board shows that petitioner poses no risk if released, petitioner futher alleges that the Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendments (due process rights), when it refused to grant petitioner a parole date despite evidence supporting a finding that petitioner posed no unreasonable risk of harm. Futhermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eigth and Fourteenth Amendments of the United States Constitution.

Petitioner also submits the Board spoke in meaningless generalities and never specified the exact nature of petitioner's current character that would make petitioner a danger to society. And by **not** doing so, the Board violated Penal Code §3041, which dictates that the Board **shall normally** set a parole release date at petitioner's Initial Hearing. Petitioner, further submits that the issue raised in this petition are of Constitutional dimension, questioning the legality of petitioner's confinement. An indeterminately sentenced prisoner must be paroled when there is no **evidence** that petitioner is a **current** or **unreasonable** risk to society. The California Supreme Court has recognized that parole applicants' posses a "protected liberty interest under the California Due Process Clause". (In re Rosenkrantz, (2002) 29 Cal.4th 616, 660; cf. McQuillon v. Duncan (9th Cir. 2002) 306 F.3d 895, 901. It is well established that Courts may review the Board's parole decisions under a highly deferential standard of review, and must reverse those decisions if there is not **"some evidence"** in the record to support them. (Rosenkrantz, supra 29 Cal.4th at 667; In re Smith (2003) 109 Cal.app.4th 489. Petitioner submits there is **no evidence** that petitioner is **currently** a threat to public safety.

PETITIONER NOW SUBMITS THE FOLLOWING POINTS AND AUTHORITIES IN SUPPORT OF THIS PETITION FOR WRIT OF HABEAS CORPUS

MEMORANDUM OF POINTS AND AUTHORITIES

Under the Board's regulations, pursuant to Penal Code §3041(b), a prisoner may be found unsuitable for parole if the Board determines that the offense or past offense and its timing is of such gravity that a longer period of incarceration is required in the interest of public safety. The determination is made based on the standards set fourth by the Board's regulations. The principle guidelines in making the determination is Cal. Code Regs. §2071 (c)-(1-6):

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

(A) Multiple victims were attacked, injured, or killed in the same or separte incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrated an exceptionally callous disregard for human suffering.

(E) The motive of the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occassions inflicted or attempted to inflict serious injury on a victim, particulary if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychiological Factors. The prisoner has a lengthy history of severe mental realted to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances (1), (2), and (4) reasonably reflect the sole specified and authorized statutory exception to setting parole release dates, for the current or past convicted offense(s). Factor (E) of circumstances (1), however, pertaining to the motive of the crime as being inexplicable, although typically stated by the Board as a factor for denying parole, is a rare circumstance, as there is almost always, as here an explanation as to why the offense occurred. Whether the motive was trivial is

another matter. As one court noted:

> "The epistemological and ethical problems involved in the ascertainment and evaluation of motive are among the reasons the law has sought to avoid the subject. As one authority has stated, "[hardly any part of Penal Law is more settled than that motive is irrelevent.]" (Hall, General Principles of Criminal Law (2d ed. 1960) at p. 88; see also Husak, **Motive and Criminal Liability (1989) vol. 8, No. 1, Crim. Justice Ethics 3.)"**

The court futher expalined:

> "The offense committed by most prisoners serving life sentences is, of course, murder. Given the high value our society places upon life, there is no motive for unlawfully taking the life of another human being that could not be deemed "trivial". The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must "normally" be given release dates as they approach their minimum eligible release dates. (Penal Code §3041, subd. (a)." (**In re Scott**, 119 CalApp.4th 871, 892-893.)

It is therefore questionable whether the factor has any evidentiary value in this case. If the motive was indeed inexplicable "A person whose motive for a criminal act can not be explained or is unintelligible is therefore unusually unpredictable and dangerous." (Id.) Such is not the case here.

The primary circumstances and factors considered to make the determination, §2402(d)(1)(B) and (D), have been explained by the courts. To qualify for the authorized exception, an offense must be exceptionally egregious. The court of appeal

characterized this as follows:

> "**In re Van Houten** (2004) 116 Cal.App.4th 339 [10 Cal.Rptr.3rd 406] illustrates the sort of gratutious cruelty required. The prisoner in that case was involved in multiple stabbings of a woman with a knife and bayonet, while she was dying, the victim was made aware her husband was suffering a similarly gruesome fate. As stated by the court, "[t]hese acts of cruelty far exceeded the minimum necessary to stab a victim to death." (Id. at p. 351) Other examples of aggravated conduct reflecting an "exceptionally callous disregard for human suffering," are set forth in Board regualtions relating to the matrix used to set base terms for life prisoners (§2403, subd. (b)); namely, "torture," as where the "[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death," and "severe trauma." As where "[death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim." (Ibid.) (I In re Scott, supra, 119 Cal.App.4th 871, 892.)

In this case there is no evidence of gratuitous cruelty or torture such as described in the foregoing. Moreover even in such cases, involving those exceptional factors, the Board's regulations and suggested terms indicate parole suitability after serving the indicated base terms.

Circumstances (3) of th unsuitability factors, "Unstable Social History" appears to be related to the commission of violent past offenses and gravity thereof. It is not a factor in this case.

Circumstance (5), "Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense." is not applicable in this case, and the Psychological Report does not indicate any such assessment.

Circumstance (6), "Institutional Behavior. The prisoner has engaged in serious misconduct like that which may result in recission proceedings as is enumerated in cal. Regs., tit. 15, §2451, or more properly, be punished by the provisions of Cal. Code Regs., tit. 15, §2410, which provides for statutory "suitability" provisions which specify only the gravity of the current or past offense to deny parole.

This "circumstance" is often relied upon by the Board to deny parole to indeterminately sentenced prisoners repeatedly and for the years at a time. Yet determinately sentenced prisoners might suffer only the loss of a few months of credit, once, for the same misconduct, which they can even get restored. As such, the Board's determinations that rely on such circumstances to deny parole, particularly beyond the indicated matrix base terms, is unauthorized by Penal Code §3041, is unfair, unreasonable and constitutes unequal punishment for the same conduct. A blatant violation of petitioner's due process rights protected by the Fifth and Fourteenth Amendments of the United States Constitution.

RELIANCE ON THE COMMITMENT OFFENSE TO DENY PAROLE AT ALL INITIAL HEARINGS AND ALMOST ALL SUBSEQUENT HEARINGS AS INCONSISTENT WITH STATUTORY LANGUAGE AND CONTRARY TO SUPREME COURT AUTHORITY

The Board's reliance on the commitment offense to deny parole at all initial hearings and almost all subsequent hearings fails to give effect to the statutory minimum terms despite Penal Code §3041 language that parole shall normally be granted at the initial hearing. The Board promulgated regulations pursuant to Penal Code §3041(a) which include standardized gravity matrices, but routinely denies parole for the same circumstances and factors specifying appropriate terms. (See Cal. Code Regs., tit. 15 §2400 et seq., footnotes citing implementation authority.)

Although it is presumed that the Board performs its duties lawfully, it is hardly debatable that the Board does not "normally" set parole release dates, as a matter of policy, where there is no substantial evidence to support the decision. See, for example, **In re** Ernest Smith, (2003) 114 Cal.App.4th 343, to name a few published cases. Because of the minimal "evidence" required under the "some evidence" standard, most of the denials and reversals of parole withstand court challenges. Releases on parole presumed by statutory language gives rise to a substancial right, but has been disregarded. The great majority of indeterminately sentenced prisoners have been repeatedly denied parole, but would have been released long ago under reasonable administration of the statutes and regulations.

> "The Court has an obligation, however, to look beyond the facial validity of a statue that is subject to possible unconstitutional administration since a "law though 'fair on its face and impartial in appearance' may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings." Minnesota v. Probate Court, (1940) 309 U.S. 270, 277.

Although the most recent interpretation of the statute at issue now holds that proportionality or comparison of like offenses is not required i.e., In re Dannenberg, (2005) 34 Cal.4th 1061, the Ninth Cirruit has previously stated:

> "While the interpretation gloss on the statute may bind this court as a matter of statutory construction, we are not, however, similarly bound as to the constitutional effect of the construction." McSherry, 880 F.2d at 1053" (Aponte v. Gomez, 993 F.2d 705 (9th Cir. 1993) (emphasis added)

This most recent interprtation of the statutes is inconsistent with decisions and history leading up to the changes in the parole statutes, which prior decisions recognized, as previously discussed:

> "In contrast, by altering the statutory scheme and enacting the DSL, the Legislature recited specifically that it "finds and declares that the purpose of imprisonment for the crime is punishment." (Penal Code §1170, sbd. (a)(1); all subsequent statutory refrences are to this code.) The new law provides that an inmate's "release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the judicial council may issue and any sentencing information relevant to the setting of parole release dates. **The Board shall establish criteria for the setting of parole release dates** and so doing shall consider the number of victims of the crime for which the prisoner is sentenced and other factors in mitigation and aggravation of the crime." (§3041, subd. (a), italics added.) The present parole guidelines were promulgated pursuant to the new act, Thus, the guidelines are not mere administrative responses to the Board's internal shifting dicretion but rather reflect basic legislative alterations in the underlying parole scheme." (In re Stanworth, (1982) 33 Cal.3d 176, 182.) (Underlining emphasis added.)

Clearly, the interpretation of the law shortly after it was changed was that the Board's discretion was limited by the legislative alterations and guidelines. The changes were clearly intended to place limits on the Board's discretion.

> That, the Montana statute places significant limits on the Board's

discretion is further demonstrated by its replacement of an earlier statute which allowed absolute discretion..." **Board of pardons v. Allen**, 482 U.S. 369.

Like with Montana statute, in California the former Penal Code §3041 was completely changed, mandating the penal Code §3041 was completely changed, mandating the establishment of criteria for the normal setting of parole dates. Furthermore, Penal Code §3041(b) clearly spells out why the Board may require an extended period of incarceration. Because the Governor is bound by the same standards as the Board, the same would apply to the Governor. The current interpretive gloss on the parole and related statutes reverts plain statutory intent to the previous parole scheme by judicial omission of part of the whole, and violates principles of statutory construction, offending due process and ex post facto law.

THE "SOME EVIDENCE" STANDARD MUST "TEND LOGICALLY", AND BY "REASONABLE INFERENCE" TO ESTABLISH A FACT RELEVANT TO PETITIONER"S SUITABILITY FOR PAROLE.

Petitioner, denies the "some evidence" standard used by the Board satisfied the requirements under both State and Federal due process. To satisfy the "some evidence" standard of Judicial Review of the Board's. Rosenkrantz, 29 Cal.4th at 677; Hill, supra, 427 U.S. at 456. However, the "some evidence" standard applies to evidenciary and is not a substitute for other due process requirements, Edward v. Balisok, (1977) 520 U.S. 641, 648, such as the Board's own preponderance of material and relevant evidence. (See Cal.Code of Regulations, tit 15, section 2000 (50)(63)(91). Thus, to determine whether the Board has fulfilled it's minimal due process procedural requirements, a reviewing Court looks not first at the decision, but the process in which it arrived at that decision. Balisok, supra, Ibid.

Here the Board continues to interpret the "some evidence" standard illegally. The

Board's decision in this case failed to point to evidence demonstrating that petitioner **currently** presents an unreasonable risk of danger to society-the ultimate question in determining petitioner's suitablility for parole (CCR, tit. 15, §2403, subd. (a) For this reason, the evidence underlying the Board's decision does not tend logically and by reasonable inference, to establish a fact relevant to the inmate's suitability for parole. (Morrall, supra, 102 Cal.App.4th at pp. 298-299). The discretion of the Board to determine parole suitability, although broad, is not absolute, and the Board's decisions nust be supported by "some evidence" (In re Powell, (1988) 45 Cal.3d 894, 902-904; see also Terhune v. Superior Court (1998) 65 Cal.App.4th 864, 872-873; In re Minnis (1972) 7 Cal.3d 639, 646-647.

The United States Supreme Court has made it clear that the "some evidence" standard discussed in Superintendent v. Hill (1985) 472 U.S. 445, is only one aspect of judicial review for compliance with minimum standards of due process. The California Legislature has given the Board guidelines to follow in evaluating a parolee's eligibility for parole, mandating that the Board "shall normally" set a parole release date... "in manner that will provide "uniform terms" for offenses of similar gravity and magnitude in respect to their threat to the public"...(Id., quoting Penal Code §3041, subd. (a).) The Board is required to "establish criteria for the setting of parole release dates." (Ibid.) However, the Board lacks discretion to promulgate regulations that are inconsistent with governing statutes, and the judicial branch has the final word on questions of legal interpretation." (Id., citing **Terhune v. Superior Court**, supra, 65 Cal.App.4th 864, 873)(emphasis added).

Petitioner asserts that the "some evidence" standard is being applied arbitrarily by the reviewing Court's in the State of California. The Courts of California, both State and Federal, seem to have settled in for the "some evidence" standard of Judicial Review. (See, e.g., McQuillon v. Duncan, 306 F.3d 895 (9th cir. 2002), and in In re Rosenkrantz, 29 Cal.4th 616 (2002). Without taking into consideration the "substantial evidence" standard which is required by reviewing courts **Consolidated**

Edison Co. v. NLRB, 305 U.S. 197 (1939) (See page 9)

The "some evidence" standard derives from the United States Supreme Court decision in Superintendent v. Hill, 472 U.S. 445; 105 S.Ct. 276 (1985), and is expressly a standard of "Judicail Review" for reviewing Court's, not the Board's standard.

The first California decision applying the "some evidence" standard of Hill was in the case of In re Powell, 45 Cal.3d 894 (1988). The Powell case was one where the Board of Prison Terms rescinded a parole grant based on a psychological report. In his petition, **Powell** argued for the "independant judgement" standard to the facts before the Board, or alternatively, the "substantial evidence" test. The people argued for the deferential "some evidence" test. **Powell** argued for the independant judgement test analogizing habeas corpus proceedings to administrative orders or decisions; in some cases it applies the independent judgement test while in other circumstances the substantial evidence test. If the former, and abuse of discretion is established when the court, exercising its independent judgement determines the administrative findings are not supported by the weight of the evidence. If the latter, the court must accept all evidence favorable to the Respondent as true and disregard any unfavorable evidence, if the evidence so viewed is sufficient as a matter of law, the order or decision must be affirmed. In rejecting Powell's argument, the court held that standard only applies when an administrative decision effects a vested right. This is a pivotal point. The Powell Court determined that "a prison inmate has no vested right in his prospective liberty on a parole release date". (id. at 903). It cited to pre-1977 section §3041; and (2) the California Supreme Court had not defined post-1977 section §3041, as having vested a liberty interest in a parole release date, as it did later in the **Rosenkrantz** decision 29 Cal.4th 616 (2002), following on the heels of McQuillon v. Duncan 306 F.3d 895, 901-903 (9th cir. 2002), which interpreted Section §3041 as creating an "expectancy of release" that was a cognizable liberty interest protected by Federal due process. Thus, the Powell Court was wrong about whether a vested right was involved, and its decision to apply the "some evidence" standard

instead of the "in dependent judgement test" or "substantial evidence" was also wrong because it was based on an incorrect interpretation of law.

Yet, the California Supreme Court in the Rosenkrantz case, 29 Cal.4th 616, applied the "some evidence" standard of Superintendent v. Hill, 472 U.S. 445 (1985), in such language as to confuse the lower Courts as to its specific purpose. i.e., the standard of judicial review. It carried forward the "some evidence" standard originally applied in In re Powell, 45 Cal.3d 894 (1988). The Rosenkrantz Court did not make clear that the "some evidence" standard was not a standard applied by the Board itself as a standard of proof in its deliberations. It appears that the ommission by the Rosenkrantz Court of any articulation of what the Board's standard of evidence would be as a critical component to the deliberative process of weighing and balancing of evidence, has resulted in the Board not applying thier own preponderance of relevant and material evidence standard (CCR, tit. 15 Div. 2, Section 2000; (50) Good cause (63) material Evidence (91) Relevant Evidence), thereby rending every decision to grant or deny parole completely standardless, and thus arbitrary and capricious.

Typically in California, the judicial standard of review of the ultimate decision of the Board of Parole Hearings denying parole to a prisoner has been the "some evidence" standard. In re Dannenberg (2005) 34 Cal. 4th 1061; In re Ramirez (2001) 94 Cal.App.4th 594, 564; **In re Rosenkrantz** [Rosenkrantz V] (2002) 29 Cal.4th 565, 616. Although both Rosenkrantz, and Dannenberg thus affirmed the importance of judicial review of the Board decisions, the decisions provide less than clear guidance as to the proper application of the "some evidence" standard articulated in both decisions. Of particular concern is the Dannenberg Court's brief deiscussion in dicta of the "commitment offense" factor, which can improperly be read as granting to the Board the ability to deny parole on the basis of almost any fact imaginable. As a result, there is a real risk the State will interpret the standard to assert, de facto, the power it has been expressly denied; effective immunity from meaningful judicial review of

parole decision. It should be recognized, however, that several courts are struggling to determine exactly how this standard applies. While other Court's (post Dannenberg and Rosenkrantz) has held that the "some evidence" standard must apply to **current dangerousness. While interpreting this standard the california Court of Appeals, Second Appellate District in the case of** In re Wen Lee, **(Oct. 17, 2006, B188831)(2006 DJDAR 13961) the court held**

> ...We conclude, however, that the Governor erred. The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal.Code Regs., tit 15, §2402, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger to society if released from prison]; see In re Scott (2005) 133 Cal.App.4th 573, 595 ["The commitment offense can negate suitability [for parole] only if circumstances of the crime ... rationally indicate that the offender will present an unreasonable public safety risk if released from prison"] but see In re Lowe (2005) 130 Cal.App.4th 1405 [suggested "some evidence" applies to the factors, not dangerousness]. Some evidence of the existence of a particular factor does not necessarily aquate to some evidence the parolee's release unreasonably endangers public safety.

In the case of In re Elkins, (Oct. 31, 2006, A111925) the Court of Appeals, First Appellate District, held that;

> ..."The 'some evidence' standard is extremely deferntial and reasonably cannot be compared to the standard of review involved in ... considering whether substantial evidence supports the findings" Nevertheless, it requires "some indicia of reliability" (**Scott II, supra**, 133 Cal.App.4th

and "may be understood as meaning some rational basis in fact" (Scott II, at P. 590, fn. 6).

One thing is for certain, even if mere "some evidence" standard is to apply in this review, that standard is only a vehicle for the Court's review of the Board's decision, not astandard for the Board itself to apply. The findings to support that initial decision by the Board to deny parole, however, must be that the record indicates the petitioner, poses a "current" danger to the public. That finding can not be based on such flimsy evidence as to render it mere whim or aprized. (See In re Ramirez, supra, at 564; See also In re Powell, (1988). To the contrary, as set forth herein, the Board's decision must be made under the **preponderance of evidence standard.** (Cal.Code of Reg., tit 15, Div. 2, section 2000 (50) Good Cause).

Petitioner denies the "some evidence" standard used by the Board satisfied the requirements under both Stae and Federal due process. Petitioner asserts reliance on the commitment offense does not satisfy the "some evidence" standard. There is no question that under Rosenkrantz and Dannenberg the statutory "commitment offense" factor is relevant, and that it may at times be enough to deny parole on its own, neither Rosenkrantz nor Dannenberg stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that relience on the commitment offense alone might, in some circumstances, rise to the level of a due process violation. That conclusion is consisitant with the concern raised by the Ninth Circuit in Biggs v. Terhune, that the reliance on an ever-frozen, unchanging factor-such as the commitment offense-in denying parole may in certain instances violate due process. This point was also addressed in the case of In re Ramirez, 94 Cal.App.4th 594, at 571 (2001), when the Court noted that reliance on the crime after 17 years in prison was arbitrary. Petitioner has been incarcerated 17 years. While the proportionality aspects of the Ramirez decision were disapproved by the California Supreme Court decision in In re Dannenberg, the entirety of Ramirez

decision, including this aspect, was not disapproved. Therfore, the Board's reliance on the commitment offense violates due process. The predictive value of the crime after 17 yearsof incarceration is zero. Furthermore, in the case of In re Scott, 34 Cal.Rptr.3d 905 (Cal.App.1 Dist. 2005), the court clearly reaffirmed the rationale of the Ramirez court when it declared ..."Parole is the rule rather than the exception" ... Thus, the California Board of Parole Hearings continuous use of the "some evidence" standard as their proper standard of review is inappropriate, thus illegal. Futhermore, reviewing Courts using the "some evidence" standard violates principles of appellate review. Substantial evidence is the standard required for a reviewing Court. **Consolidated** Edison Co. of New York v. NLRB, 305 U.S. 197 (1939). It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Chrysler v. U.S. EnviromentProtection Agency, C.A., 631 F.2d 865, 890. Under a proper analysis, the "substantial evidence" test, and not a "some evidence" review is the appropriate standard.

ALL RELEVANT AND RELIABLE POST-CONVICTION EVIDENCE MUST BE GIVEN THE REQUIRED
CONSIDERATION IN FAVOR OF PETITIONER IN LIGHT OF THE EVIDENCE PRESENTED

Petitioner submits that the Board bases its reasons for petitioner's continued incarceration on historical facts that can never change, thus ignoring the contradicted evidence of petitioner's rehabilitation. Petitioner has achieved the very goal that is hailed by our judicial and correctional systems, coming to prison, turning his life around and committing himself wholeheartedly to bettering himself and the world around him. Petitioner asserts there is **no evidence** that petitioner is **currently** a threat to public safety. At petitioner's rehabilitation. Petitioner asserts he has taken every available step to improve his life, pay his debt to society, and prepare himself for eventual release, as it is required under Penal Code §3041 for eligible prisoners serving indeterminate sentences. The Board's reliance on the Commitment Offense as satisfying the "some evidence" standard of review is without

merit, after removing the facts erroneously relied upon, relied exclusively upon the Commitment Offense and failed to weigh and consider petitioner's remorse, positive psychological profile, lack of future dangerousness, and both realistic and positive parole plans including housing, education, and employment. The Board is required to consider all relevant information about a prisoner, not simply his commitment offense. His "risk of danger to society is to be assessed in light of all relevant information available to the panel. (Cal. Code Regs., tit. 15, §2402(b)).

Under the view of the California parole process, it is clear that the nature of the commitment offense can constitute a basis for denial only to the extent it sheds light on whether a prisoner "now poses a risk of danger to society". Relying on the offense after years in custody and clear evidence of rehabilitation becomes arbitrary. At some point along the parole consideration process, that excuse to refuse to set a parole date enlight of exemplary conduct and behavior becomes arbitrary, and the term, although initially valid, becomes dispropriate uniform term for the offense approaches, the offense itself sheds less and less light on how a prisoner will behave on the outside. His record in prison, his mental health, his conduct and achievements, all shed more light on his readiness to rejoin society. (See **Deluna**, supra 2005 WL 268045, 6) a defendant's postcommitment institutional behavior is relevant to his suitability for parole [citing §2402, subd. (d)(9)], and has both positive and realistic parole plans (See In re Deluna, supra, 2005 WL 268045, 5- Stable Relationships with others favor parole (15 CCR §2402 subd. (d)(9), All these factors favor his release. There is no evidence petitioner now poses a risk of danger to society.

The Board's reasons finding petitioner unsuitable is unreasonable and an abuse of discretion enlight of the evidence presented to the board by petitioner and the Department of Corrections and Rehabilitation Psychological Department and Counselor.

At the hearing, Correctional Counselor I, T. Verdesoto testified as to petitioner's programming, and his future residence and employment when paroled:

Therapy and self-help Activities: Since Plaza's incarceration, he has participated in Alcoholics Anonymous, Inmate Education Advisory Committee, Bible Sudy, the Impact Program, Narcotics Anonymous, served as a Deacon, and was a member of the Protestant Choir.

Postconviction Factors: Plaza was received by CDC on 10/9/91 at Wasco RC and was transfered to CSP Folsom on 12/17/91 and was classified with Close A custody. On 2/22/92, Plaza was transfered to Calipatria where his custody was reduced to Close B. While in Calipatria, he worked in the culinary, pre-voc. and commputer programming. Plaza was again transfered to CSP-LAC on 2/3/94. He was classified there with Medium A custody. While at LAC, Plaza worked in the Drycleaning Voc., Electrical Voc. and Air Cond. Refrigeration/heating Vocation. On 12/16/97 he was transfered to Avenal where he was in Computer programming. On 3/13/98 he was transfered to CTF Soledad North where he was assigned to the Yard crew 4/7/98 to 4/28/98, and then to PIA Textiles. On 12/31/98 Plaza went to CMC East as a medical transfer and returned to CTF on 3/1/99 where he has remained housed. At his initial classification, Close B was established. Plaza's custody was reduced to Medium A on 3/23/00 and has remained at Medium A. While at CTF Central, Plaza has been assigned to Wing Porter Culinary, Dental Assistant and again Culinary, where he remains assigned.

Disciplinary History: Plaza has remained disciplinary free throughout his incarceration.

Residence: Plaza plans on living with his brother, Hector Plaza. phone number is (805) 581-6323

Employment: Plaza plans on working at Telair International 4175 Gardain street, Simi Valley, CA. 93063, phone number (805) 578-7303

Assessment: In review of Plaza'a parole plans, this counselor does not foresee any problems, however, it is recommended that Plaza updates his support letters prior to his hearing. (see Exhibit "B").

Dr. M. Macomber testified as to petitioner his current mental stability and his lack of present and future dangerousness:

Psychiatric and Medical History: There is no psychiatric history. There is no history of serious accidents or head injuries or seizures. His health is good.

Current Mental Status/Treatment Needs: Mr. Plaza related in a serious, sober and cooperative manner. Mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. He does speak excellent English as well as Spanish. Affect was appropriate. There was no evidence of anxiety or depression. Eye contact was good. His memory was intact. His judgement was intact. His insight and self-awareness were good.

Mr. Plaza has spent a great deal of time in prison trying to improve himself. He surrently is attending Coastline Community College, working on his Associate of Arts Degree. His grades are very good. Also, he has obtained a certificte as a home Inspector from Professional Career Institute in Georgia by correspondence. In addition, he has completed

several courses toward self-improvement. He has completed a Prison fellowship Course in Parenting, Anger Management, another 12 week Anger Management class, Fathers Behind Bars Activity Group, Family Effectiveness Training and Harmony in the Home Anger Management course, Christian basics class, Teddy Bear Drive Benefiting Children in Crisis a Job Success course, Communicable Diseases, Impact Program focusing on the victim's rights, Christian Living course, Laubach Literacy Tutor Program, and the Salvation Army Bible Correspondence course.

Current Diagnostic Impression: Axis I-Drug and alcohol use by history; Axis II-No personality disorder; Axis III-No physical disorder; Axis IV-life term incarceration; Axis V-Current GAF: 95.

Assessment of Dangerousness: (A) In considering potential for dangerous behavior in the institution. Mr. Plaza has remained entirely disciplinary free. This is commendable. This is very difficult to do. At this time in prison, we are having frequent racial riots. It is very difficult for a hispanic male to disassociate himself from this activity, which can spontaneously occur in front of him, and if he doesn't get involved, he will receive retaliation. In this case, remaining disciplinary free is very difficult and commendable achievement. There is no evidence that he has ever been involved in riots, possession of weapons, assaults on others, or threats of any kind. As a result, it is evident that his potential for dangerou behavior in comparison to other inmates is definately below average.

Mr. Plaza has a chrono from Captain Guerra, in which it was stated that he had been hand picked to work as a communicator, working as a mediator

between the two groups in the institution that had been involved in a riot against each other. Due to his ability to mediate between the groups and to get them to agree to non violence towards each other, the riot that occured at that time was resolved peacefully, and the result was that the institution was able to unlock everybody and proceed with the program.

(B) In considering potential for dangerous behavior in the community, Mr. Plaza has no prior arrests for violence before the commitment offense. He did receive an arrest as an adult in 1983 for spraying a one inch diameter dot on the wall. He has remained disciplinary free in the institution. In order to determine his risk level on parole, the Level of Service inventory-Revised was adminsitered. This is an actual measure that assesses criminal history, substance abuse history, current adjustment, and other factors to determine current risk level. On this measure he obtained a score of 3.6 cumulative frequency for prison inmates. This means that if 100 men were released on parole , he would do better on parole than 96 of them. This is a very low risk level. As a result, he poses no more threat to society than the average citizen in the community, and probably less threat to society at this point in his life. (CO At the time of the offense, drugs and alcohol were a problem; however, at this point in his life this no longer is an issue. Therefore, there are no significant risk factors in this case.

Clinician Observation/Comments/Reccomendations: There are no mental or emotional problems in this case that would interfere with routine parole planning. Mr. Plaza has obtained vocational training in several areas. He is currently working as a meat cutter in culinary. He has skills in vocational dry cleaning, as well as in vocational air

> conditioning/refrigeration and heating. He also has a job offer waiting for him upon release. He has very strong family support in the community. All these factors are good indicators of positive parole success. He has maintained his marriage, and wife continues to be supportive and involved in his life. He maintains constant contact with his three children. Due to his study of the Bible and his commitment to the christian way of life, He no longer has the irresponsible values and lifestyle that he did prior to the commitment offense. All these factors indicate that his prognosis for successful adjustment in the community is excellent. (See Exhibit "C").

Petitioner asserts that the rehabilitative evidence submitted by petitioner and both the Life Evaluation Report and Pyschological Report is supportive of release contrary to the Board's specious findings. The Biggs Court addressed the Board's illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial.

> "The record in this case and the transcripts of Biggs hearing before the Board clearly show that many conclusions and factors relied on by the Board were devoid of evidentiary basis".

Petitioner submits that the record in this case is also devoid of evidentiary basis as to the Board's findings that evidence presented is not supportive of release, which violates due process. Petitioner further submits that despite the overwhelming evidence that petitioner does not present a current risk to public safety. The Board arbitrarily found petitioner unsuitable for release. Petitioner asserts that the real reason given by the Board indicative of unsuitability is the commitment offense, and if allowed to identify the unchanging circumstances as indicative of unsuitability,

this would put petitioner in an impossible situation, where no matter what he shows in terms of positive behavior, reformation, self-help, work skills, parole plans, on just rehabilitation in general, he would never be able to overcome the unchanging facts of the crime. The only logical application of constitutional due dictates what the court in Irons v. Warden, 358 F.supp.2d 936, 947, (E.D.Cal. 2005) held, i.e., that any denial requires the presence of some in-prison behavior showing that the inmate **currently** presents an unreasonable risk of danger if paroled.

Here the facts of the crime have been the only real reason for denying parole. Yet, those facts have never been tied to **current** behavior showing that petitioner still presents an unreasonable risk at this time. A rule requiring the presence of in-prison adverse behavior to justify a denial based on the crime simply recognizes what the 9th Circuit in Biggs alluded to when it talked of the rehabilitative goals of the system., and the need to take into consideration that a person can rehabilitate themselves. This seems to be missing from the Board's current agenda and policy. This denies to petitioner the process to which he is constitutionally due.

At this point, petitioner has been incarcerated over 23 years (including pre-& post-conviction credit). His programming clearly shows his full rehabilitation. In drawing the line as to when a denial becomes arbitrary, that line has definitely been crossed in this case, as the Board cannot present factual findings showing a continued risk of danger based on the rehabilitative evidence presented. To the contrary, the in-prison facts are exclusively positive.

As Ramirez noted (Ramirez, 94 Cal.App.4th at 594), the paroling authority must do more than merely commend petitioner for the hard work done to rehabilitate himself while in prison. They must actually consider these factors "as... circumstance[s] tending to show his suitability for parole." Ramirez supra 94 Cal.App.4th at 571-72 [emphasis in original]. Of course, all the board did with petitioner's extensive accomplishments was to brush them aside with several terse lines and issue superficial compliments. Obviously, no serious consideration was ever given to petitioner's

outstanding programming. Yet, the Biggs rule is clear that if an inmate "continue[s] to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole". Biggs v. Terhune, supra 334 F.3d at 916. Here, the evidence of actual rehabilitation is beyond dispute.

The Board's inability to find anything in his current programming, demeanor or psychological condition to justify a finding of current dangerousness, the Board continuously falls back on the immutable and unchanging facts, of the crime, to base its findings of unsuitability.

Again as noted above, wherever one draws the line as to when the reliance on the unchanging facts of the commitment offense becomes a violation of due process in the abstract, under the facts here after 17 years, it clearly has passed here. Thus, the Board must do more than simply commend petitioner for his efforts and accomplishments, and must consider them as favoring parole in evaluating suitability. Ramirez, supra at 572. The Board must do this even if the factors of the commitment offense in the abstract can be said to be sufficient to deny petitioner parole.

Petitioner asserts that he has continued to be a **model** inmate. Yet, continues to be deprived the benefits of his exemplary rehabilitation by the California Board of Parole Hearings. The only real issue at a parole hearing is whether the inmate **currently** poses an unreasonable risk of danger to the public if paroled. This must be determined by an inmates post-conviction evidence of rehabilitation. Petitioner has met every prerequisited condition that warrants a finding of suitability. Because there is no evidence to support a finding that petitioner poses a current threat to public safety of any magnitude, let alone an unreasonable level of threat, the decision denying parole can not be sustained.

CONCLUSION

The Parole Board's decision was arbitrary and capricious. Petitioner did not

receive a fair hearing from the Board of Parole Hearings, nor will he ever.

The Court must order petitioner released or at the very least, direct the Board of Parole Hearings to issue a decision within ten days granting petitioner parole, setting his term as prescibed by the Legislature and the Statutes.

Based on the foregoing reasons and the entire file herein, petitioner submits that the hearing was a sham and a farce in violation of the intent of the Legislature when it enacted Penal Code §3041 et seq. 30 years ago.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 18 day of February 2008, Correctional Training Facility, Soledad, Ca.93960-0689.

Jesse Plaza petitioner In pro Per

PRAYER FOR RELIEF

1. Issue an Order to Show Cause on an expedited basis directing Respondent to file a Return pursuant to Rule 4.551, California Rules of Court;
2. Issue a Writ of Habeas Corpus;
3. Order Respondent to provide petitioner with reasonable discovery;
4. Conduct an Evidenciary Hearing;
5. Declare the rights of the parties;
6. Order injunctive relief;
7. Appoint Counsel;
8. Issue an order directing petitioner released on parole;
9. Direct Respondent to release petitioner forthwith upon the granting of his release on parole;
10. Issue an Order directing petitioner released on his own recognizance or on

reasonable bail;

11. Grant all other relief necessary to promote the ends of justice.

Dated: 3-16-08

Respectfully submitted

Jesse Plaza

In Pro Per

PROOF OF SERVICE BY MAIL

I Jesse Plaza, declare that:

I am over 18 years of age, and I am the pro se petitioner to the attached cause of action. My complete mailing address is: Jesse Plaza, H-12371, P.O. Box 689 FW-338L, Soledad Ca. 93960-0689.

That I served a true and correct copy of the attached to the following partie(s), with postage fully prepaid and deposited in the prison (U.S. mail) box to:

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVE.
SAN FRANCISCO, CA. 94102

I decalre under penalty of perjury that the foregoing is true and correct, executed this 16TH day of MARCH, 2008 at Soledad, California.

Jesse M. Plaza

Jesse Plaza

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date:	SEPTEMBER 6, 2007			
Honorable:	STEVEN R. VAN SICKLEN	Judge	JOSEPH M. PULIDO	Deputy Clerk
	NONE	Bailiff	NONE	Reporter

(Parties and Counsel checked if present)

BH004502
In re,
JESSE PLAZA,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on February 23, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667.

The Petitioner was received in the Department of Corrections on October 9, 1991 after a conviction for murder in the first degree with a firearm. He was sentenced to 25 years to life. His minimum parole eligibility date was January 25, 2007. The record reflects that on May 26, 1990, the Petitioner was driving with fellow gang members on a street known to be the territory of a rival gang. The Petitioner drove slowly, with the headlights turned off, as he approached the victim, a rival gang member, who was standing in front of a house. As the Petitioner drove by, his accomplice fired several shots at the victim. The victim was shot and killed. The Petitioner then sped away. A witness heard the gunshots and saw the Petitioner's car speed away called the police and the Petitioner and his accomplices were pulled over and arrested.

The Board found the Petitioner unsuitable for parole after his first parole consideration hearing held on August 29, 2006. The Petitioner was denied parole for two years. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily upon his commitment offense.

The Court finds that there is some evidence to support the Board's finding that the Petitioner's offense was carried out in a calculated and dispassionate manner. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner drove slowly with his headlights turned off, so as to avoid detection as he approached the victim. This demonstrates that the shooting was planned and that the Petitioner was deliberately driving toward the victim for that purpose. Additionally, the Petitioner's accomplice was armed with a gun for the purpose of shooting the victim. Regardless of whether the Petitioner himself shot the victim, he was acting in concert with his accomplice and, therefore, the shooting is imputed to him.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: SEPTEMBER 6, 2007			
Honorable: STEVEN R. VAN SICKLEN	Judge	JOSEPH M. PULIDO	Deputy Clerk
NONE	Bailiff	NONE	Reporter

(Parties and Counsel checked if present)

BH004502
In re,
JESSE PLAZA,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

The Court also finds that there is some evidence to support the Board's finding that the Petitioner's motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B). The Petitioner and his accomplice shot the victim merely because he was a rival gang member. There is no evidence that the victim had threatened or harmed the Petitioner in any way. Gang rivalry is a very trivial motive for killing a man.

Additionally, the Court finds that the Board did not err in denying the Petitioner parole for a period of two years. The Board must articulate reasons that justify a postponement, but those reasons need not be completely different from those justifying the denial of parole. See *In re Jackson* (1985) 39 Cal.3d 464, 479. The Board indicated that the Petitioner was denied parole for two years because his commitment offense was calculated and dispassionate and against a particularly vulnerable victim; his motive was trivial; and he failed to show adequate remorse for the victim. These reasons were sufficient to justify a two-year denial.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Jesse Plaza
H-12371
Correctional Training Facility
P.O. Box 689
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

Minutes Entered
09-06-07
County Clerk

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012	CONFORMED COPY SEP 0 7 2007 LOS ANGELES SUPERIOR COURT Joseph M. Pulido
PLAINTIFF/PETITIONER: JESSE PLAZA	
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER: BH004502

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- ☐ Order Extending Time
- ☐ Order to Show Cause
- ☐ Order for Informal Response
- ☐ Order for Supplemental Pleading
- ☒ Order re: Writ of Habeas Corpus
- ☐ Order
- ☐ Order re:
- ☐ Copy of Petition for Writ of Habeas Corpus for the Attorney General

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

September 7, 2007
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk
Joseph M. Pulido

Jesse Plaza
H-12371
Correctional Training Facility
P.O. Box 689
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JESSE PLAZA, On Habeas Corpus.	B202665 (Super. Ct. No. VA004108)

ORDER

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed October 9, 2007. The petition is summarily denied.

COURT OF APPEAL - SECOND DIST.
FILED
NOV 8 - 2007
JOSEPH A. LANE Clerk
J. GUZMAN Deputy Clerk

BOREN, P.J. ASHMANN-GERST, J. CHAVEZ, J.

Court of Appeal, Second Appellate District, Div. 2 - No. B202665
S158421

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JESSE PLAZA on Habeas Corpus

The petition for review is denied.

GEORGE
Chief Justice

COURT CLERK, 3-1708

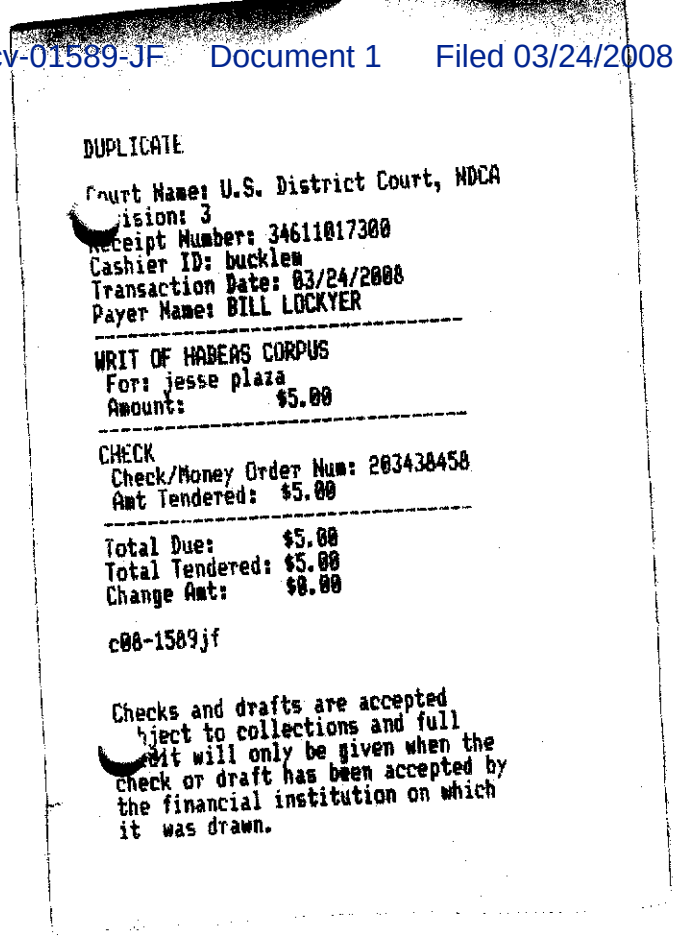
PLEASE STAMP A COPY OF COVER SHEET FILED & RECEIVED & MAIL BACK TO ME. S.A.S.E. INCLUDED/PROVIDED

THANK YOU FOR YOUR TIME & HELP.

J. M. Plaza

JESSE M. PLAZA H-12371
P.O. BOX 689 ZW-302
SOLEDAD, CA. 93960-0689

(OFFICE OF T
STATES DIST



DUPLICATE

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611017300
Cashier ID: bucklew
Transaction Date: 03/24/2008
Payer Name: BILL LOCKYER

WRIT OF HABEAS CORPUS
For: jesse plaza
Amount: $5.00

CHECK
Check/Money Order Num: 203438458
Amt Tendered: $5.00

Total Due: $5.00
Total Tendered: $5.00
Change Amt: $0.00

c08-1589jf

Checks and drafts are accepted subject to collections and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.